

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 19, 2001

STATE OF TENNESSEE v. LANE PULLEY

**Direct Appeal from the Circuit Court for Wayne County
No. 12236 Robert L. Jones, Judge**

No. M2000-02609-CCA-R3-CD - Filed December 14, 2001

The Appellant, Lane Pulley, was convicted by a Wayne County jury for committing a deceptive business practice, a class B misdemeanor. Tenn. Code Ann. § 39-14-127(a)(2). The indictment charged that the deceptive practice arose from a verbal contract for the repair of a vehicle. Over a three-year period, the owner of the automobile paid Pulley a total of \$2,483.90 for various repairs to her vehicle. The vehicle was never returned to the owner. On appeal, Pulley argues that the evidence presented at trial failed to establish an essential element of the offense, *i.e.*, that he was engaged in the automobile repair business or that his conduct with the victim arose in the course of such business. After review, we conclude that Pulley's conduct violated the provisions of the Deceptive Business Practices statute and the proof is legally sufficient to support his conviction. Accordingly, the judgment of the Wayne County Circuit Court is affirmed.

Tenn. R. App. P. 3; Judgment of the Circuit Court is Affirmed.

DAVID G. HAYES, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and JERRY L. SMITH, J., joined.

R. H. Stovall, Jr., Assistant Public Defender, Columbia, Tennessee, for the Appellant, Lane Pulley.

Paul G. Summers, Attorney General and Reporter; Michael Moore, Solicitor General; Elizabeth T. Ryan, Assistant Attorney General; T. Michael Bottoms, District Attorney General; and J. Doug Dicus, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

In April of 1994, Ruby Donegan bought a 1985 Buick from her niece for \$500 and had the motor in the vehicle replaced. After the motor was replaced, Ms. Donegan continued to have mechanical problems with the car. Ms. Donegan heard through "word of mouth" that the Appellant was a good mechanic and could repair her vehicle. Although the two lived some distance apart, Ms.

Donegan had known the Appellant for some time because they were related.¹ She contacted the Appellant, and he agreed to repair her car for \$500.

On April 20, 1995, the Appellant, who resided in Henderson County, drove to Ms. Donegan's residence in Wayne County. Once there, the Appellant took possession of Ms. Donegan's vehicle and returned it to his garage in Henderson County to begin repair. Ms. Donegan paid the Appellant \$250, one-half of the agreed-upon repair price. Several days later, the Appellant called Ms. Donegan and explained that he found additional problems with her car. The Appellant told Ms. Donegan that he would need more money to complete the additional repairs and Ms. Donegan sent him a check in the amount of \$354. On April 30, 1995, Ms. Donegan sent the Appellant another check for \$258. Ms. Donegan testified that, over a period of approximately three years, she sent the Appellant a total of \$2,483.90 to repair her car. Although Ms. Donegan renewed the vehicle's tags in both 1995 and 1996, she never saw the car again. On December 27, 1997, Ms. Donegan called the Appellant and inquired about her vehicle. The Appellant assured her he would return the car to her the following Monday, but never did.

The Appellant testified that he made numerous repairs to Ms. Donegan's vehicle, including rebuilding the transmission, replacing the water pump, and changing the thermostat. He also testified that he "had a man down the road" fix the air conditioner on the car. After making these repairs, the Appellant stated that he called Ms. Donegan and told her "to come and get her car and explained to her that he had done all he could with it." According to the Appellant, Ms. Donegan stated that "she was tired of fooling with it." Sometime later, the Appellant moved and had the car towed to his sister's property. The Appellant admitted receiving the car for repair and admitted to receiving the money, but stated that he did not know "what had happened to the car after he took it to his sister's property."

ANALYSIS

The Appellant argues that the evidence is insufficient to support his conviction for committing a deceptive business practice.

On appeal, it is incumbent upon the defendant to establish that the evidence presented at trial was so deficient that no reasonable trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Tenn. R. App. P. 13(e); Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994), *cert. denied*, 513 U.S. 1086, 115 S. Ct. 743 (1995). In the present case, the indictment charged that the Appellant "did unlawfully and intentionally, knowingly, or recklessly commit an unlawful and deceptive business practice, to wit: did accept a car for repair, was paid for said repair and then sold the vehicle, without the knowledge of the owner, Ruby Hazel Donegan, in violation of Tenn. Code Ann. § 39-14-127." Based upon the indictment in this case, the State was required to prove, beyond a reasonable doubt, the following essential elements of the offense:

¹Ms. Donegan's father and the Appellant were first cousins.

- (1) that the Appellant (intentionally, knowingly or recklessly) delivered less than the represented quantity of any service;
- (2) that the Appellant was engaged in the automobile repair business and dealt with the victim in the course of business; and
- (3) that the Appellant intended to deceive the victim.

The Appellant's principal challenge to his conviction lies in his argument that the State failed to establish that he was engaged in the business of repairing automobiles and that the agreement to repair Ms. Donegan's vehicle arose within the course of that business. The term "in the course of business" is not defined by the Deceptive Business Practices statute. Tennessee Code Annotated § 39-11-104 provides that criminal statutes "shall be construed according to the fair import of their terms . . . to promote justice, and effect the objectives of the criminal code." "The most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995). The language of the statute, "with intent to deceive in the course of business," reflects its broad scope. As such, this language is to be given liberal construction so that the broad purpose of the statute may be effected.

The Deceptive Business Practices statute, as the name suggests, is designed to protect consumers against fraud and to prevent conduct that threatens harm to the public interest.² The statute does not apply to every breach of contract as its purpose is not merely to remedy bad bargaining. As the Sentencing Commission Comments note, the statute is not intended to cover casual personal transactions.³ Rather, the statute is intended to regulate only fraudulent business practices which by their very nature necessarily implicate consumer protection concerns for the unwary public.

Although unrelated to the provisions of the criminal code, we adopt the definition of "business" as provided by Tennessee Code Annotated § 67-4-702, which affords a fair import of the term "business" and which gives proper effect to the legislative intent. Furthermore, course of business is defined as simply the usual and normal conduct of business. BLACK'S LAW DICTIONARY 356 (7th ed. 1999). Tennessee Code Annotated § 67-4-702(1) defines a "business" in pertinent part as:

'Business' includes any activity engaged in by any person, or caused to be engaged in by the person, with the object of gain, benefit, or advantage, either direct or

²It is observed that our Deceptive Business Practices statute is contained within the theft provisions of Chapter 14, Offenses Against Property.

³A review of the legislative history of the Deceptive Business Practices statute reveals no Sentencing Commission Comments other than this single comment.

indirect. ‘Business’ does not include occasional and isolated sales or transactions by a person not routinely engaged in business.⁴

Moreover, we hold that “occasional and isolated” transactions, terms excluded from the definition of business, comport with the Sentencing Commission Comments which states that casual personal transactions are not covered by the statute. Finally, we would observe that no distinction should be made between a “full-time” and a “part-time” business activity as consumer protections concerns are equally implicated. With these principles established, we, in turn, examine the proof introduced at trial. Our task in this regard is somewhat frustrated by a sparceness of the evidence within the record.⁵

In the present case, the Appellant was characterized as a “shade tree mechanic” who worked on a part-time basis in a building that he had converted to a garage behind his house. The Appellant “did no advertising except by word of mouth.” The victim contacted the Appellant because of his reputation as a “good mechanic.” The Appellant testified that he “did mechanic work for a car dealer in Lexington and some electrical work.” A defense witness testified that the Appellant was an “excellent shade tree mechanic” who “did work for the public.” With regard to this transaction, the proof established that the Appellant agreed to repair the victim’s automobile for \$500. The Appellant drove to the victim’s residence and returned the car to his garage for purposes of repair. During the period of April 1994 to December 1997, the victim paid the Appellant the sum of \$2,483.90 upon assurances that her automobile would be repaired. The vehicle was never returned by the Appellant or made available for return to the owner. Based upon these facts, we find the proof legally sufficient to establish that the Appellant was routinely engaged “in the automobile repair business.” Moreover, we find from the proof in the record that a jury could have rationally concluded that the Appellant, with the intent to deceive, delivered less than the represented service agreed upon. Tenn. Code Ann. § 39-14-127(a)(2). Accordingly, we find the proof legally sufficient to establish the Appellant’s guilt for violation of the Deceptive Business Practices statute.

CONCLUSION

⁴Tennessee Code Annotated § 67-4-702(1), defining “business,” is contained within the provisions of the Business Tax Act. Tenn. Code Ann. § 67-4-701 *et. seq.* Adoption of this term as defined by the Business Tax Act is utilized for purposes of definition only.

⁵Apparently, no court reporter was present at trial, therefore, no stenographic transcription of the evidence is available. The record includes a narrative statement of the evidence, as provided by Rule 24(c), Tennessee Rules Appellate Procedure.

Because we find the Appellant was engaged in the repairing of the victim's vehicle during *the course of business*, we find the evidence presented sufficient to support his conviction for committing a deceptive business practice. Accordingly, we affirm the judgment of the Wayne County Circuit Court.

DAVID G. HAYES, JUDGE